No. 15427

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

vs.

CHARLES E. BLACKFORD,

Appellant.

BRIEF OF APPELLEE.

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I.
STATEMENT OF THE CASE.

We do not disagree with the facts of the case as stated by Appellant (App. Br. p. 3). However, we feel that a more complete statement is necessary for the proper presentation of the case. The following facts are substantially those which are stated in the findings of the trial Court. [Clk. Tr. pp. 39-44.]

On July 31, 1956, at approximately 9:45 p.m. Appellant entered the United States from Mexico at the San Ysidro port of entry, San Ysidro, California. Appellant approached the Customs Inspector on duty who was inspecting pedestrian traffic, Customs Inspector Herbert S. Summerhill. Inspector Summerhill asked the Appellant if he had acquired any article in Mexico. The Appellant stated,

"No." Inspector Summerhill then asked the Appellant to come into the Customs building for an examination and personal search. [Clk. Tr. p. 21.]

After the Appellant and Inspector Summerhill entered the building, Appellant took off his coat. Inspector Summerhill at that time noticed numerous puncture marks in the veins of the arms of the Appellant. Inspector Summerhill asked the Appellant if he was addicted to narcotics. The Appellant replied that he was not addicted at that time although he had used narcotics in the past. The Appellant stated that he was only "chippying" but that he was not "strung out." In the slang of narcotics users, "chippying" means that a person uses narcotics occasionally and is not addicted. The phrase "strung out" means that a person is addicted. At that time the defendant also stated that he had recently been released from San Quentin following a conviction for possession of marihuana and was still on parole. [Clk. Tr. pp. 21-22.]

The Appellant was ordered to remove his clothing. No contraband was found in the clothing or on his person at that time. Inspector Summerhill and Inspector Eaton, who was also present during the search, noticed a considerable amount of a light colored grease around the anal opening of the Appellant. The Appellant at this time denied that he had any narcotics concealed in his rectum. [Clk. Tr. p. 22.]

The defendant was further questioned by Inspector Summerhill. The Appellant then stated that he had about a "spoon" of heroin which was enclosed in a rubber contraceptive in his rectum. A spoon of heroin is approximately a measured tablespoon. The Appellant, at Inspector Summerhill's suggestion, attempted unsuccessfully to eject

the heroin and to remove it with fingers at that time. Inspector Summerhill asked Blackford if he wanted to be taken to a doctor who would help remove the heroin. Blackford stated that it would be all right with him. The defendant was put under arrest at that time and was handcuffed. [Clk. Tr. pp. 22-23.]

At approximately 10:30 p.m., United States Customs Agent Girard C. Polite arrived at the Customs building at San Ysidro. Customs Agent Polite questioned the Appellant further, and the Appellant again tried to eject the heroin. Agent Polite took Appellant Blackford to the San Diego County Jail, arriving at the County Jail at approximately midnight. [Clk. Tr. p. 24.]

At approximately 1:30 a.m., August 1, 1956, Dr. Harry W. Depew arrived at the County Jail. Dr. Depew is a physician licensed to practice medicine in the State of California. Dr. Depew told the Appellant that he intended to examine the Appellant's rectum. The Appellant at this time stated that he did not have any narcotics in his rectum. The Appellant asked if he could object to the examination. Agent Polite said that the Appellant could object if he wished; however, the examination was going to be made, in view of Appellant's previous statement that he had heroin in his rectum. The Appellant lowered his own pants and shorts. Dr. Depew examined the Appellant by inserting his finger into the Appellant's rectum, the finger being enclosed in a rubber glove, the glove being lubricated with some petroleum jelly. The Appellant did not cooperate, would not bend over, and would not hold still. Dr. Depew was able to insert his finger into the Appellant's rectum and felt some firm object in the rectum; however, he was unable to remove the object. [Clk. Tr. pp. 25, 27, 28.]

Agent Polite took Appellant Blackford to the United States Naval Hospital, San Diego, California, where they arrived at approximately 2:30 a.m. On arrival at the United States Naval Hospital, the Appellant was taken to the examination room. He was asked to lower his pants but refused to do so. Agent Polite attempted to lower the Appellant's pants but was pushed away by the Appellant. Two hospital corpsmen, George R. Hogabaum and Don W. H. Regan, held the Appellant's arms while Agent Polite lowered the Appellant's pants and shorts. The hospital corpsmen, still holding the defendant's arms behind him, forced the Appellant to bend over.

Dr. Eugene B. Gregory, a qualified physician and resident doctor at the United States Naval Hospital, made a rectal examination of the Appellant with his finger in the same manner as had Dr. Depew. The Appellant still was being held during this examination. Dr. Gregory felt some foreign object in the Appellant's rectum but was unable to remove it. The Appellant was released by the hospital corpsmen. The Appellant was asked to get on an examination table and assume a knee-chest (kneeling) position. The Appellant got up on the table by himself. A corpsmen pushed his head down in order to get his chest close to the table, but the Appellant was not otherwise held while he was on the table. [Rep. Tr. pp. 41, 66.]

At this time Dr. Gregory, using an anoscope and a forceps, attempted to remove the foreign object from the defendant's rectum. A portion of the contraceptive was broken, during this attempt. Dr. Gregory was unable to remove the object. [Clk. Tr. pp. 25-26; Rep. Tr. pp. 39-42, 65-66.]

After the contraceptive was broken the Appellant exhibited some alarm and attempted to eject the object by himself but was unable to do so. The Appellant was given a number of soapy water enemas under the direction of Dr. Gregory. Appellant finally succeeded in ejecting the object. The object consisted of a whitish powder, contained in two rubber contraceptives, one inside the other. The outer contraceptive had been broken. The whitish powder was heroin, weight, one ounce, 333 grains. [Clk. Tr. pp. 26-27, 38; Rep. Tr. pp. 42-43, 66-67.]

II.
ISSUES.

The sole issue in this case is whether the search was reasonable.

The trial court found that Appellant consented to certain parts of the search—the search at the border and the ultimate removal of the heroin—and did not consent to other parts of the search—the search at the county jail and the search at the U. S. Naval Hospital up to the time that the outer container broke. [Clk. Tr. pp. 40-43.]

The evidence presented by the government showed that the Appellant exhibited some alarm after the outer container was broken and that he did consent to the subsequent action of the doctor and the medical orderly in removing the heroin [Clk. Tr. p. 43]; although the Appellant testified to the contrary. [Rep. Tr. p. 62.]

We believe the facts speak for themselves. It is the government's position the officers were empowered to make the search under the circumstances of the case without Appellant's consent.

III.
ARGUMENT.

A. Customs Officers Are Entitled to Search Persons Entering the United States for Merchandise and for Contraband.

All merchandise that is brought into the United States from a foreign country must be "entered" (19 U. S. C. 1484, 1498). Part of the "entry" consists of a "declaration" to the effect that all papers submitted as part of the entry are true (19 U. S. C. 1485). Oral declarations are permitted in certain instances (19 C. F. R. 10.19(b); 19 C. F. R. 21.17). All merchandise and baggage which is brought into the United States from a contiguous country msut be presented to a customs officer for inspection (19 U. S. C. 1461); and all articles brought into the United States by any individual must be declared to a customs officer. (19 C. F. R. 10.19(a).)

In order to enforce the provisions of law pertaining to inspection and declaration of merchandise and to prevent the illegal importation of narcotics and other contraband, customs officers are permitted to search vessels, vehicles and persons entering the country for undeclared merchandise, narcotics and other contraband.

The history of tariff laws in the common law system goes back to the 1600s in England. The case of *Keck v. United States* (1899), 172 U. S. 434, 446-456, contains a short history of the early English and American tariff laws. The first statute passed by Congress to regulate the collection of duties (Act of July 31, 1789 (1 Stat. at Large 43)), authorized seizures of goods concealed to avoid tariff duties.

In *Boyd v. United States* (1886), 116 U. S. 616, 623, the Supreme Court pointed out that the Congress which enacted the 1789 Tariff law was the same Congress which proposed for adoption the original amendments to the Constitution.

> ". . . it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable' and they are not embraced within the prohibition of the amendment." (116 U. S. 623.)

In *Carroll v. United States,* 267 U. S. 132, the Supreme Court stated that,

> "persons who enter the United States may be searched without the necessity of probable cause. Travelers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in." (267 U. S. 154.)

In *United States v. Landau* (2d Cir., 1936), 82 F. 2d 285, a case involving a search of baggage of a person returning to the United States from overseas at the customs house, the Second Circuit Court of Appeals stated:

> "As early as 1799, the baggage of one entering the country was subject to inspection (1 Stat. 662). The necessity of enforcing the customs laws has always restricted the rights of privacy of those engaged in crossing the international boundary. See *Carroll v. United States,* 267 U. S. 132, 154, 45 S. Ct. 280, 69 L. Ed. 543, 39 A. L. R. 790. Neither a warrant nor an arrest is needed to authorize a search in these circumstances. In the instant case, there was no disturbance of the Appellant, his resi-

dence, or his effects after a completed entry. It was to these evils that the Fourth Amendment was directed."

The power of customs officials to make searches of persons coming into the country has three sources of statutory authority. The material portions of those statutes are quoted below:

Title 19, U. S. C., Sec. 1581:

"(a) Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States * * * and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance."

Title 19, U. S. C., Sec. 1582:

"The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations."

Title 19, U. S. C., Sec. 482:

"Any of the officers or persons authorized to board or search vessels may stop, search, and examine * * * any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, * * * and to search any trunk or enve-

lope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law: * * *."

In *United States v. Yee Ngee How* (N. D. Cal., 1952), 105 F. Supp. 517, involving a personal search of a seaman coming off of a vessel, the District Court stated in interpreting these sections that it was the intention of Congress to create a broad authority for custom officials to conduct reasonable searches necessary to the enforcement of custom laws. The special provision in Section 1582, *supra,* relating to employment of females to conduct searches of females, further shows the intent of Congress as to the extent of the search of persons at the border.

B. The Search of Appellant Was Reasonable Under the Circumstances.

1. The Facts of the Case Clearly Showed That the Search Was Reasonable Under the Circumstances.

Inspector Summerhill first became suspicious by reason of Appellant's answers and conduct. He noted the Appellant's arms had numerous puncture marks over the veins. The Appellant used some slang which is common to narcotic users. The Appellant admitted that he had served a two-year penitentiary sentence at San Quentin for a narcotics offense. After the Appellant was stripped, a greasy substance was observed around the anal opening of the Appellant. The Appellant admitted having a "spoon" of heroin concealed in his rectum. The Appellant was arrested at this time. [Clk. Tr. pp. 21-23.]

After the Appellant unsuccessfully attempted to eject the narcotic himself, he was taken to a doctor at the county jail. After Doctor Depew was unsuccessful in

obtaining the narcotic, Agent Polite followed the doctor's advice in taking the Appellant to the United States Naval Hospital. [Clk. Tr. p. 25.]

It was only when the Appellant resisted by force Agent Polite's effort to remove the Appellant's trousers that any force was used upon the Appellant. [Clk. Tr. p. 26.] Appellant was restrained while the doctor made the rectal examination with his hand. [Rep. Tr. p. 65.] Thereafter the Appellant submitted to an examination with an anoscope. [Rep. Tr. pp. 41, 66.] At that time a portion of the contraceptive container broke. Following this occurrence, no further force was used on the Appellant to which the Appellant did not consent. The Appellant was cooperating fully when he was given the enema. [Rep. Tr. pp. 42, 43, 67.]

2. The Interests of Society Require Such Searches Under These Circumstances.

The Fourth Amendment prohibition against searches extends only to those searches which are unreasonable (*Carroll v. United States,* 267 U. S. 132). The use of the term "unreasonable" implies a weighing process.

In *Breithaupt v. Abram* (Oct. Term, 1956, Decided Feb. 25, 1957), ... U. S. ....., which case will be discussed most completely later in this brief, the Court stated the problem as follows:

> "As against the right of an individual that his person be held inviolable, even against so slight an intrusion as is involved in applying a blood test of the kind to which millions of Americans submit as a matter of course nearly every day, must be set the interests of society in the scientific determination of intoxication, one of the great causes of the mortal

> hazards of the road . . . the individual's right to immunity from such invasion of the body as is involved in a properly safeguarded blood test is far outweighed by the value of its deterrent effect due to public realization that the issue of driving while under the influence of alcohol can often by this method be taken out of the confusion of conflicting contentions."

In the instant case the interests of society in the enforcement of custom laws and in the prevention of narcotics traffic would be weighed against the extent of the invasion of the privacy of the defendant under the circumstances of this case. Reasonableness is not a matter of theory but is a pragmatic question, to be determined in each case in the light of its own circumstances (*Go-Bart Importing Company, v. United States,* 282 U. S. 344, 357).

The concealment of narcotics in body cavities is far from a rare occurrence. There is a reference to the search for concealed valuables in natural body cavities in the novel "Candide" by Voltaire, which was written in 1759. ". . . 'tis a custom established from time immemorial among the civilized nations who roam the seas. . . ." (Chap. XI, "The Old Woman's Story," Modern Library Edition, pp. 41-42.) The need for such searches has continued to the present. In the past two and one-half years in twenty per cent of the cases prosecuted involving the smuggling of heroin into San Diego County, the heroin was concealed in natural cavities of the body. [Clk. Tr. p. 32.]

A motion to suppress the evidence was made in the United States District Court in the following unreported cases:

United States v. Baray (1953), S. D. Tex., No. 14907;

United States v. Lieberknecht (1953), S. D. Tex., No. 13965;

United States v. Pierce (1956), S. D. Tex., No. 17312;

United States v. Hardy (1956), S. D. Cal., No. 25948-SD;

United States v. Perez (1957), S. D. Cal., No. 26350-SD.

In each of the above cases the seizure of narcotics from natural body cavities by customs officers was upheld by the trial court. In some of the cases the trial court did find that the defendant had consented to the search. In no case to our knowledge has a trial court ever granted a motion to suppress the evidence in such circumstances. To quote from the oral opinion of Judge Allred, in *United States v. Baray, supra,*

> "I hold it was not unreasonable here, and to say that it was would absolutely tie the hands of law enforcement officials as to importation of heroin and other drugs into this country."

3. Rochin v. California Can Be Validly Distinguished.

Appellant relies upon the case of *Rochin v. California* (1952), 342 U. S. 165. The facts as stated by the United States Supreme Court in the *Rochin* case are as follows:

> "Having 'some information that (the petitioner here) was selling narcotics,' three deputy sheriffs of

the County of Los Angeles, on the morning of July 1, 1949, made for the two-story dwelling house in which Rochin lived with his mother, common-law wife, brothers and sisters. Finding the outside door open, they entered and then forced open the door to Rochin's room on the second floor. Inside they found petitioner sitting partly dressed on the side of the bed upon which his wife was lying. On a 'night stand' beside the bed the deputies spied two capsules. When asked 'Whose stuff is this?' Rochin seized the capsules and put them in his mouth. A struggle ensued, in the course of which the three officers 'jumped upon him' and attempted to extract the capsules. The force they applied proved unavailing against Rochin's resistance. He was handcuffed and taken to a hospital. At the direction of one of the officers a doctor forced an emetic solution through a tube into Rochin's stomach against his will. This 'stomach pumping' produced vomiting. In the vomited matter were found two capsules which proved to contain morphine." (342 U. S. 166.)

The Supreme Court stated:

"We are compelled to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combatting crime too energetically. This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation." (342 U. S. 172.)

In the instant case, the trial court found that the conduct of the officers and the doctors was not brutal or shocking. [Clk. Tr. p. 44.] Appellant's claim evidently is that any use of force upon his person is necessarily brutal and shocking. (App. Op. Br. p. 6.) Such a conclusion is not warranted. The Court's finding in this matter is a finding based on substantial evidence.

The trial court also found that the search was not painful. Although Appellant complained during the examination that the doctor was hurting him [Rep. Tr. p. 27], under the circumstances the Court was justified in believing that such protestations were feigned.

If there was actual pain involved, it probably resulted from Appellant's resistance. [Rep. Tr. pp. 9-11.] Regardless of whether the rectal examination and the removal of the heroin might be described as uncomfortable [Clk. Tr. p. 29; Rep. Tr. p. 29] or to some degree painful, it certainly cannot be said, as in the *Rochin* case, that the entire course of conduct was so brutal and shocking as to offend the conscience and thus be violative of due process.

In a California case, *People v. Woods,* 132 Cal. App. 2d 515, 293 P. 2d 901, the defendant was arrested for being under the influence of a narcotic. Prior to being taken to the jail he was asked if he had any narcotic on his person, and he stated he did not. He was further advised that it was a felony to bring narcotics into the jail. After the defendant was brought into the jail he was taken to a doctor for examination. The defendant was requested to remove his trousers and bend over, which the defendant did under protest. The doctor upon examination found an object in the defendant's rectum

which turned out to contain heroin. The California District Court of Appeal found that the actions of the officers were not so brutal and shocking that they offended the due process clause under the *Rochin* decision. The Court held that the search was reasonable under the California rule pertaining to searches and seizures. (*People v. Cahan,* 44 Cal. 2d 434.)

The Court in the *Woods* case quoted from *People v. Haeussler* (1953), 41 Cal. 2d 252, 295, cert. den. 347 U. S. 931:

> " . . . 'The Rochin opinion does not rest on the premise that the taking of evidence from the person of the defendant or by entry into his body is the decisive factor. Instead, the entire course of conduct was examined and found to be brutal and shocking' . . ."

Breithaupt v. Abram (Oct. term 1956, decided Feb. 25, 1957, ... U. S. ....., is a recent decision by the United States Supreme Court in which Mr. Justice Clark rendered the majority opinion upholding a conviction in the New Mexico State Court of the petitioner for manslaughter. In such case the petitioner was involved in an automobile accident in which he was injured and others were killed. While the petitioner was unconscious, an attending physician withdrew some blood from him by the use of a hypodermic needle. The blood contained about .17% alcohol. This evidence was used to convict petitioner of manslaughter. The Court in distinguishing the *Rochin* case stated:

> "We set aside the conviction because such conduct 'shocked the conscience,' and was so 'brutal' and 'offensive' that it did not comport with traditional ideas

of fair play and decency. We therefore found that the conduct was offensive to due process. But we see nothing comparable here to the facts in Rochin.

"Basically the distinction rests on the fact that there is nothing 'brutal' or 'offensive' in the taking of a sample of blood when done, as in this case, under the protective eye of a physician . . . We therefore conclude that a blood test taken by a skilled technician is not such 'conduct that shocks the conscience,' Rochin, supra, at 172, nor such a method of obtaining evidence that it offends a 'sense of justice,' Brown v. Mississippi, 297 U. S. 278, 285-286 (1936)."

In the instant case the rectal examination and removal of the narcotics was done "under the protective eyes of a physician." They were performed according to medically approved practices. As with the blood test, such examination and removal is a routine medical practice. [Clk. Tr. pp. 44, 28-29; Rep. Tr. pp. 28, 43.]

In a dissenting opinion, in *Breithaupt v. Abram, supra,* Chief Justice Warren stated:

"We should, in my opinion, hold that due process means at least that law-enforcement officers in their efforts to obtain evidence from persons suspected of crime must stop short of bruising the body, breaking skin, puncturing tissue or extracting body fluids, . . ."

Thus, even measured by the standards of the minority opinion of Chief Justice Warren, the search in the instant case does not violate due process.

In the instant case Appellant was carrying the heroin in his rectum as he would carry it in his pocket. Appel-

lant's use of his body cavity as a place of concealment was a wilfully and carefully conceived plan to smuggle the narcotics into the country. The heroin was to be removed from Appellant's rectum and sold on the illegal narcotics market in this country. Two ounces of heroin is a large amount of heroin; it is a commercial amount—heroin to be peddled in the United States. Its cost in Mexico was approximately $800.00 and it could be sold for as much as $25,000.00 to $30,000.00 in the United States. [Clk. Tr. p. 31.] This was not the situation in the *Rochin* case, *supra,* nor in the case of *United States v. Willis,* 85 Fed. Supp. 745, a case similiar to the *Rochin* case. In the latter cases each of the defendants attempted to destroy a small quantity of narcotics by swallowing it.

To state that a smuggler's body cavity is immune from search would be to create a "diplomatic pouch" for narcotics smugglers and to license the smuggling of narcotics into the country. The foregoing statement is not made lightly by reason of the fact, as previously stated, that in twenty per cent of the smuggling cases prosecuted in San Diego in the two and one-half years prior to the instant case, involved narcotics concealed in body cavities.

4. Customs Inspectors Have the Power and Duty to Make Such Searches Under These Circumstances Whether or Not Resistance Is Offered.

Appellant apparently makes no complaint as to his original search by Inspector Summerhill at the border, for the actions and the conduct of the Customs Inspectors were entirely proper and lawful. The original questioning of the Appellant was lawful, the examination of the arms of the Appellant was lawful, the continued question-

ing of the Appellant was lawful, and the personal search of the Appellant was lawful, and the arrest was lawful.

Compare such conduct to the conduct of the officers in the *Rochin* case, *supra,* using the words of the California District Court of Appeal, as quoted in the United States Supreme Court's opinion:

> "the officers 'were guilty of unlawfully breaking into and entering defendant's room and were guilty of unlawfully assaulting, battering, torturing and falsely imprisoning the defendant at the alleged hospital.' 101 Cal. App. 2d 140, 143, 225 P. 2d 1, 3." (342 U. S. 166, 167.)

The examination of Appellant in the county jail was similar to the examination of the defendant in *People v. Woods, supra,* 139 Cal. App. 2d 515, 293 P. 2d 901. Appellant was in custody after lawful arrest. Appellant was examined by a physician, Dr. Depew. (It is interesting to note that Dr. Depew also made the examination in the *Woods* case.) Appellant did not consent to the rectal examination. Appellant was not held and no force was used. Certainly, there was no conduct on the part of the officers or the doctor which could be described as brutal or shocking. It is submitted that Agent Polite and Dr. Depew acted properly and lawfully.

Admittedly, force was used upon the Appellant during the course of the rectal examination at the Naval Hospital. The Appellant was held while Dr. Gregory conducted the examination.

Assume, for the purpose of argument, that Appellant had not offered physical resistance at the Naval Hospital. The conduct of the Naval Hospital doctors and the hospital orderlies would have been no different than the conduct of the officers and Dr. Depew at the county jail and no different than what happened in *People v. Woods, supra.* If Appellant had not forcibly resisted, it is submitted the conduct of Agent Polite, Dr. Gregory and the hospital orderlies would have been proper and lawful. If Agent Polite had the power to make the search, then Appellant had no right to resist. In fact, the forceful and intentional resistance and interference with a federal officer while in the course of his official duties is itself a crime. (18 U. S. C. 111.) The illegal resistance of Appellant cannot turn a legal search into an illegal search. This would be making a right of two wrongs.

We may ask the question, where did the conduct of Agent Polite and persons acting at his direction become illegal. At the Customs House? At the County Jail? At the hospital? It is submitted that at all times Agent Polite and the persons acting at his direction acted properly and lawfully, that Agent Polite had the power to search Appellant and the duty to do so, that Appellant's illegal resistance did not turn a legal search into an illegal search.

C. It Was the Duty of the Customs Officers, Having Custody of Appellant to Take All Reasonable Steps to Protect the Health and Safety of Appellant as Well as All Other Prisoners.

The United States, having the right to hold a prisoner in custody, has an equal duty to protect him against assault or injury from any quarter. (*Logan v. United States,* 144 U. S. 263.) This includes the duty to provide for the necessary medical attention of prisoners.

> *Spicer v. Williamson,* 191 N. C. 483, 132 S. E. 291, 44 A. L. R. 1280, 1283.
>
> *City of Tulsa v. Sisler* (Okla., 1955), 285 P. 2d 422.

The narcotics concealed in Appellant's rectum were dangerous to his health and safety. There was danger of obstruction of the rectum and rupture of the container. [Clk. Tr. pp. 43-44, 28, 29; Rep. Tr. pp. 30-31.]

The officers were also under a duty to prevent the introdution of narcotics into the county jail in order to protect the other prisoners. [Clk. Tr. p. 33.]

IV.
CONCLUSION.

In this case Appellant was apprehended by Customs Inspector Summerhill smuggling heroin into the United States in a commercial quantity. He was using his body cavity as a pocket to conceal the heroin. The rectal examinations and removal of the heroin were routine medical practices accomplished by approved medical procedure. It is submitted that Appellant's body cavity, under these

circumstances and the other circumstances of this case, is not immune to search. It is submitted that the conduct of Inspector Summerhill and Agent Polite and the doctors acting at their direction, was proper and lawful.

Appellant in effect said to the United States: Yes, I am bringing heroin into the United States from a foreign country! It is in my possession! I defy you to take it from me! I will resist your efforts if you attempt to do so!

It is submitted that under the facts of this case the Constitution of the United States does not prevent the enforcement of the Customs laws of the United States which prohibits the smuggling of narcotics into the United States.

Respectfully submitted,

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